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 U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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 KARGO, INC., ACK VENTURES HOLDINGS, LLC, :
 and UNITED MOBILE TECHNOLOGIES, LLC, :
 :
 Plaintiffs, :
 :
 - against - :
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 PEGASO PCS, S.A. DE C.V., PEGASO :
 TELECOMUNICACIONES, S.A. DE C.V., :
 TELEFÓNICA MÓVILES MÉXICO, S.A. DE C.V., :
 TELEFÓNICA MÓVILES, S.A., and TELEFÓNICA :
 S.A. :
 :
 Defendants. :
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05 Civ. 10528 (CSH)(DFE)

Hon. Charles S. Haight

Hon. Douglas F. Eaton

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/14/06

**STIPULATED PROTECTIVE ORDER
 AND CONFIDENTIALITY AGREEMENT**

All the parties to this action having requested that the Court issue a protective order pursuant to Fed. R. Civ. P. 26(c) to protect the confidentiality of nonpublic and competitively-sensitive information that may need to be disclosed to adversary parties in connection with discovery in this case, and the parties having agreed to the following terms, and the Court having found that good cause exists for issuance of an appropriately-tailored confidentiality order governing the pretrial phase of this action, it is therefore hereby

ORDERED that any person subject to this Order -- including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order -- shall adhere to the following terms, upon pain of contempt:

1. Any person subject to this Order who receives from any other person any "Discovery Material" (*i.e.*, information of any kind provided in the course of discovery in this action) that is designated as "Confidential" pursuant to the terms of this Order shall not disclose such Confidential Discovery Material to anyone else except as expressly permitted hereunder.

2. The person producing any given Discovery Material may designate as Confidential only such portion of such material as consists of:

(a) non-public financial information (including without limitation profitability reports or estimates, percentage fees, design fees, royalty rates, minimum guarantee payments, sales reports and sale margins);

(b) non-public material relating to ownership or control of any non-public company;

(c) non-public business plans, product development information, or marketing plans;

(d) non-public trade secrets or other research, development, or sensitive commercial information;

(e) any information of a personal or intimate nature regarding any individual; or

(f) any other category of information hereinafter given confidential status by the Court.

3. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the producing person or that person's counsel may designate such portion as "Confidential" by stamping or otherwise clearly marking as "Confidential" the protected portion in a manner that will not interfere with legibility or audability, and by also producing for future public use another copy of said Discovery Material with the confidential

information redacted. With respect to deposition transcripts and exhibits, a producing person or that person's counsel may indicate on the record, or by written notice within 14 days of receipt of transcript, that a question calls for Confidential information, in which case the transcript of the designated testimony shall be bound in a separate volume and marked "Confidential Information Governed by Protective Order" by the reporter.

4. If at any time prior to the trial of this action, a producing person realizes that some portion[s] of Discovery Material that that person previously produced without limitation should be designated as Confidential, he may so designate by so apprising all parties in writing, and such designated portion[s] of the Discovery Material will thereafter be treated as Confidential under the terms of this Order.

5. No person subject to this Order other than the producing person shall disclose any of the Discovery Material designated by the producing person as Confidential to any other person whomsoever, except to:

- (a) the parties to this action;
- (b) counsel retained specifically for this action, including any paralegal, clerical and other assistant employed by such counsel and assigned to this matter;
- (c) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
- (d) any witness, not otherwise permitted access to confidential material, who counsel for a party in good faith believes may be called to testify at trial or deposition in this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (e) any person retained by a party to serve as an expert witness or otherwise

provide specialized advice to counsel in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;

- (f) stenographers engaged to transcribe depositions conducted in this action;
- (g) copy services; and
- (h) the Court and its support personnel.

6. Prior to any disclosure of any Confidential Discovery Material to any person referred to in subparagraphs 5(d) or 5(e) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that that person has read this Order and agrees to be bound by its terms.

7. This Protective Order has no effect upon, and shall not apply to (1) any producing party's use of its own Confidential Discovery Material for any purpose or (2) any person's use of documents or other information developed or obtained independently of discovery employing court process in this action for any purpose.

8. Nothing herein shall bar or otherwise restrict an attorney, who is counsel for this action, from rendering advice to his or her client with respect to this action, and in the course thereof, from generally relying upon his or her examination of Confidential Discovery Material. In rendering such advice or in otherwise communicating with the client, the attorney shall not disclose the specific content of any Confidential Discovery Material of another person or party where such disclosure would not otherwise be permitted under the terms of this Protective Order.

9. Confidential Discovery Material shall be used solely for purposes of the above-captioned action and shall not be used for any other purpose during or after such action.

10. All Confidential Discovery Material filed with the Court, and all portions of pleadings, motions or other papers filed with the Court that disclose such Confidential Discovery

Material, shall be filed under seal with the Clerk of the Court and kept under seal until further order of the Court. The parties will use their best efforts to minimize such sealing.

11. Any party who either objects to any designation of confidentiality, or who, by contrast, requests still further limits on disclosure (such as "attorneys' eyes only" in extraordinary circumstances), may at any time prior to the trial of this action serve upon counsel for the designating person a written notice stating with particularity the grounds of the objection or request. If agreement cannot be reached promptly, counsel for all affected persons will convene a joint telephone call with the Court to obtain a ruling. While such dispute is pending, the Discovery Material at issue shall be treated as Confidential (or in the event of a request for additional limits on disclosures, consistent with such request for additional limits) under the terms of this Order.

12. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Discovery Material introduced in evidence at trial, even if such material has previously been sealed or designated as Confidential. The Court also retains discretion whether to afford confidential treatment to any Confidential Document or information contained in any Confidential Document submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court.

13. Each person who has access to Discovery Material that has been designated as Confidential shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

14. Inadvertent failure to designate any material which a producing party claims should be Confidential Discovery Material will not be deemed a waiver of the right to make that designation. But no party shall be held in breach of this Protective Order if, in the interim, such

material or information has been disclosed to any person(s) not authorized to receive Confidential Discovery Material under this Protective Order, or has been used in a manner inconsistent with this Protective Order. Upon receipt of such written notice, the party who received the previously undesignated Confidential Discovery Material shall make all reasonable efforts under the circumstances (1) to retrieve all such material disclosed to persons other than those authorized in accordance with Paragraph 5 hereof for access to such information, (2) to affix appropriate legends to the Confidential Material, as provided in Paragraph 3 hereof, and (3) to prevent further use or disclosure of the information contained in the previously undesignated Confidential Material by persons other than those authorized in accordance with Paragraph 5 hereof for access to such information.

15. This Protective Order shall survive the termination of the litigation. Within 30 days of the final disposition of this action, all Discovery Material designated as "Confidential," and all copies thereof, upon written request, shall be promptly returned to the producing person, or, upon permission of the producing person, destroyed.

16. Nothing in this Protective Order shall prevent any party from disclosing its own confidential information to any person as it deems appropriate, and any such disclosure shall not be deemed a waiver of any party's rights or obligations under this Protective Order.

17. Nothing in this Protective Order shall constitute: (i) an agreement by the parties to produce any documents or supply any information or testimony in discovery not otherwise agreed upon or required by Court order; (ii) a waiver by any person or party of any right to object to or seek a further protective order with respect to any discovery request in this or any other action; or (iii) a waiver of any claim of immunity or privilege with regard to any testimony, documents, or information.

18. Evidence of the existence or non-existence of a designation under this Protective Order shall not be admissible upon the merits of claims or defenses for any purpose.

19. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

Dated: New York, New York
November 1, 2006

Attorneys for Defendants

LEBOEUF, LAMB, GREEN & MACRAE LLP

By: 

Thomas G. Rohback, Esq. (TR-4817)
Brian A. Burns, Esq. (BB-2416)
125 West 55th Street
New York, New York
10019-5389
(212) 424-8000

Attorneys for Plaintiffs

MOUND COTTON WOLLAN & GREENGRASS

Philip C. Silverberg, Esq. (PS-8110)
Gretchen Henninger, Esq. (GH-0035)
One Battery Park Plaza
New York, N.Y. 10004
(212) 804-4200

GRAYSON & KUBLI, P.C.

By: *Victor A. Kubli*

Alan M. Grayson, Esq. (pro hac vice)
Victor A. Kubli, Esq. (pro hac vice)
1420 Spring Hill Road
Suite 230
McLean, Virginia 22102
(703) 749-0000
(703) 442-8672 (facsimile)

SO ORDERED *Nov. 13, 2006*

Douglas F. Eaton
Douglas F. Eaton, U.S. Magistrate Judge

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SOUTHERN DISTRICT OF NEW YORK

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- against -	Hon. Douglas F. Eaton
PEGASO PCS, S.A. DE C.V., PEGASO	<u>Non-Disclosure Agreement</u>
TELECOMUNICACIONES, S.A. DE C.V.,	:
TELEFÓNICA MÓVILES MÉXICO, S.A. DE C.V.,	:
TELEFÓNICA MÓVILES, S.A., and TELEFÓNICA	:
S.A.	:
Defendants.	:
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I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as Confidential. I agree that I will not disclose such Confidential Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Dated: _____

Respectfully submitted,
Attorneys for Defendants

LEBOEUF, LAMB, GREEN & MACRAE LLP

By: s/ Brian A. Burns 

Thomas G. Rohback, Esq. (TR-4817)
Brian A. Burns, Esq. (BB-2416)
125 West 55th Street
New York, New York
10019-5389
(212) 424-8000

Attorneys for Plaintiffs

MOUND COTTON WOLLAN & GREENGRASS

Philip C. Silverberg, Esq. (PS-8110)
Gretchen Henninger, Esq. (GH-0035)
One Battery Park Plaza
New York, N.Y. 10004
(212) 804-4200

GRAYSON & KUBLI, P.C.

By: 

Alan M. Grayson, Esq. (pro hac vice)
Victor A. Kubli, Esq. (pro hac vice)
1420 Spring Hill Road
Suite 230
McLean, Virginia 22102
(703) 749-0000
(703) 442-8672 (facsimile)